

The complaint

The trustees of a trust, which I will refer to as M, complain about the way MS Amlin Insurance SE handled and decided its marine insurance claim.

What happened

The circumstances leading to this complaint are known by both parties, so the following is intended only as a brief summary. Additionally, although various individuals have been involved on both sides, I have largely just referred to M and MS Amlin for the sake of simplicity.

M owns a yacht and had this insured by a marine insurance policy underwritten by MS Amlin. From late-2022 to mid-2023, the yacht was at a boat building yard, undergoing refurbishment. On inspecting the yacht in July 2023, M noticed damage caused by an ingress of water, and submitted a claim under the policy. The claim form said the water had likely entered via a poorly fitted sail track fitting, and the front and aft hatches being left open during the rebuild phase.

MS Amlin did not agree that there had been an insured event that had caused the damage, so did not cover the claim. It is noted that no formal decline letter was provided. M complained about the handling of the claim and the decision not to cover the damage. M said, in part, that there was an extreme weather event on 24 February 2023 that had caused sealing tape around the exposed rear hatch and mast holes to fail, allowing water to enter the yacht.

MS Amlin apologised for some of the customer service aspects and offered M compensation of \$500NZD, but said that it was not willing to cover the claim. MS Amlin explained that it considered the damage had occurred over time and was not “sudden accidental physical loss or damage”, which is what the policy provided cover for. And said that M was relying on a report from an inspection that had been carried out in March 2024, when the yacht was in a different condition to when the claim was made.

M brought its complaint to the Ombudsman Service. However, our Investigator did not recommend the complaint should be upheld. He thought MS Amlin had demonstrated that the damage had most likely occurred gradually over a period of time, and so it had acted fairly and reasonably by not meeting the claim. He also didn't recommend that MS Amlin needed to do anything more in relation to the customer service issues.

M remained unsatisfied, so its complaint has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am not upholding this complaint. I'll explain why.

Both parties have provided detailed submissions, covering a number of points. I have considered all of these, but I will not be commenting on everything. Instead, I will focus on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

The main issue relating to this complaint is MS Amlin's decision not to cover the claim. MS Amlin has relied upon findings from the loss adjuster it appointed; I've referred to them as L. M has relied upon findings from its own loss assessor; I've referred to them as N. Both experts generally agree; 'fresh' water has entered the yacht, this has potentially damaged certain components, and the moisture in the yacht has caused the growth of mould which has caused damage. It also appears to be generally agreed that the most likely route of ingress was through the hatches on the yacht and also possibly the exposed mast hole.

There is potentially some dispute over the timing of the ingress of water. N has referred to comments from the parties with whom the yacht was left for refurbishment, and has said that the only period when the water could have entered the yacht was between February 2023 and March 2023, as this was when the yacht was outside. And has said that there was an extreme weather event on 24 February 2023, which N considers to be when water ingress occurred. L has referred to the period between May and June 2023 as being a potential period when water ingress occurred. L's timeframe appears to be largely based on the comments in M's claim form that this is when the yacht was placed back in the water. It does not appear that MS Amlin do not consider the water ingress could have occurred in the February-March period.

Given the timeline of events as I understand them, and the fact the water appears to be rain water rather than sea water, it does seem likely that water ingress occurred within the February-March period. It seems some water was bailed out of the yacht at this point. Though it is also possible there was further ingress at a later stage, for the purpose of this decision, I have assumed that the only the February-March period is relevant.

It is initially for M to demonstrate that there was an insured event that led to the damage. The policy only covers "sudden" damage. M and N have said that there was a storm on 24 February 2023 and that this is most likely when sudden damage was caused (the damage to the sealings which allowed the ingress of water). However, it is also noted that there were apparently a number of events of bad weather over this period. And M has not provided any persuasive evidence that that cause of damage was any one of these events in particular.

I am also not persuaded that M has demonstrated that the cause of damage was an event of bad weather at all. It isn't clear that the hatches and exposed holes had been appropriately sealed prior to any of these weather events. As MS Amlin has said, the report from N was based on an inspection that took place around a year after the damage initially occurred. And it would appear difficult for this inspection to have accurately determined the quality of any sealing of the vessel in February 2023. L's comments refer to a number of issues with the material on the yacht, and offers the suggestion that the hatches may have been left partially open. Even M's initial claim form refers to its assumption of the hatch(es) being left open. So, it is not clear that water would not have entered the vessel over this period of time anyway due to 'normal weather'.

These do appear to be somewhat speculative conclusions from L. And I also note the comments M has made about L and L's findings. But ultimately, it is for M to initially demonstrate that there cause of damage was an insured event. And I do not consider the evidence provided is persuasive of there being sudden damage.

Notably, it also does not appear the yacht was being regularly inspected. It wasn't until

13 March 2023 that it was discovered that the yacht had taken on water. This was potentially several weeks after water had entered the yacht. And it also seems that the bailing out that took place at that time did not remove all of the water, from all areas of the yacht. This may have increased the level of damage that occurred. But also supports the conclusion that reasonable care was not being taken.

Even if it could be persuasively demonstrated that the failure of the sealing and ingress of water was, primarily, due to the event on 24 February 2023, this would not mean that all of the damage would be covered. The development of mould etc. within the yacht clearly would've taken place over some time. And regular inspection of the yacht ought reasonably to have identified the presence of water, and action could've been taken which would have prevented this gradual damage. It does not appear this water was identified until June 2023.

I do appreciate that the yacht was not in M's control at this time. But this does not mean there was an insured event that needs to be covered. I note that the policy also says, "Persons in charge of the Vessel with your permission must observe fulfil and be subject to the terms exceptions and conditions of this policy in so far as they can apply." And one of the terms of the policy is to take reasonable care to prevent damage. Whilst this hasn't been specifically relied upon by MS Amlin in this case (as MS Amlin isn't satisfied there was an insured event in the first place), it is likely MS Amlin could reasonably have relied upon this to decline the claim.

I have noted the comments from M and N. But, ultimately, I am not persuaded that M has shown that the cause of damage was "sudden". It follows that I am satisfied MS Amlin acted fairly and reasonably in deciding not to meet the claim.

There were some issues with the handling of the claim. This includes the fact that a formal decline letter was not provided by MS Amlin in 2023. However, whilst M is unhappy with the timeline involved, and the lack of this formal decline, I note MS Amlin has already offered compensation in respect of this. And I consider this has appropriately redressed the impact of any failings here.

I appreciate that this outcome is not the one M and its trustees were hoping for. But I am unable to fairly and reasonably direct MS Amlin to do any more in the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 6 June 2025.

Sam Thomas
Ombudsman